

Committee on Small Business, Emergency Preparedness, Technical Colleges and Consumer Protection Wednesday, July 22, 2009

Senate Bill 190

Statement by Equipment Leasing & Finance Association

This statement outlines Equipment Leasing and Finance Association (ELFA) opposition to Senate Bill 190. ELFA is the trade association representing financial services companies and manufacturers engaged in financing the utilization and investment of/in capital goods. ELFA members are the driving force behind the growth in the commercial equipment finance market and contribute to capital formation in the U.S. and abroad. Its over 600 members include independent and captive leasing and finance companies, banks, financial services corporations, broker/packagers and investment banks.

Senate Bill 190 inserts consumer concepts within business-to-business transactions financing equipment, thus intertwining commercial equipment contracts for tangible personal property with statutory models relating to real property for consumers. Although our industry is not engaged in transactions with consumers, the Analysis by the Legislative Reference Bureau reports this bill incorporates landlord-tenant doctrine applicable to residential property into commercial contracts that are based on the Uniform Commercial Code (UCC), which is an inappropriate convergence of unrelated concepts.

Senate Bill 190 creates a hybrid that equates the awareness of business owners entering a commercial equipment lease involving tangible personal property as being on par with consumers renting an apartment. Confusion is further heightened as this bill lacks a provision to clarify it would be operative to contracts entered into after the effective date. Renewal provisions have been widely used in equipment lease financing nationwide for many years without significant complaints or litigation. Please note UCC Article 2A contains detailed provisions regarding equipment leasing.

Equipment leasing and finance companies together with small businesses leasing equipment should discharge their legal responsibilities in a manner reflective of marketplace realities rather than tapping into consumer mandates. This interchanging of legal concepts that are considered mutually exclusive should be avoided in part because to raise capital to invest in new leases for business purposes, lessors frequently assign or package and securitize leases to institutional investors. Many of these leases contain automatic renewal provisions. Senate Bill 190 makes their assignment more complex and inhibits capital formation through assignments and securitization when the economy is facing a tightening of credit. Wisconsin should not make raising capital to invest in financing lessees more complex.

Regarding automatic renewals, ELFA supports clear and transparent disclosure of automatic renewal clauses in leasing contracts. Looking at the notice provisions in Senate Bill 190, they should be modified to function appropriately within the marketplace described by Wisconsin industry members during the hearing. In addition, we are deeply concerned about the provisions in the bill that (i) impose excessive and unreasonable penalties upon lessors, (ii) allow lessees to use equipment without paying for it and retroactively apply the bill to contracts that are already in place which by definition means that completely legal contracts would now be rendered in violation of this bill.

In the 2009 Survey of Equipment Finance activity, equipment financing in the state of Wisconsin grew by 40.7%. When comparing 2007 to 2008, Wisconsin is the 5th fastest growing state. Wisconsin ranks 21 among states in equipment finance volume. In 2008, true leases designed for businesses that seek flexibility to upgrade equipment while maintaining low monthly payments amounted to \$4 Billion out of \$650 nationwide and total equipment volume in Wisconsin within all categories makes up about 1.9% of all equipment financing in the United States. A more inclusive look at difficulties for this capital formation that is associated with Senate Bill 190 brings the following issues to attention:

- Clarify the statute applies only to equipment to be used in Wisconsin (See first sentence of definition of "Business Contract" and definition of "Customer"). While it is understood that the sponsor does not want to limit the Bill to services performed in Wisconsin, the Bill should not apply to equipment to be used outside the State of Wisconsin.
- Reduce exemption of contracts for \$250,000+/yr to \$50,000+/yr (See exemption 1 under definition of "Business Contract"). Aggregate annual rentals of \$50,000 equates to a monthly rental of nearly \$4,200. Contracts of this size are in almost all cases entered into by sophisticated customers, who, if not represented by counsel, will certainly be sure to carefully read, evaluate and negotiate the contract they are signing. For that reason, contracts of this size should not be covered by the bill.
- The language in the exemption of contracts for \$250,000+/yr refers to "an undetermined amount of business services" or "an undetermined amount of business equipment". This language is somewhat ambiguous and may create confusion. Nearly every lease is for specific items of equipment or services (not an unknown or undetermined amount of equipment or services). We have proposed language to clarify this exemption in that regard. (See exemption 1 under definition of "Business Contract").
- Amend the vehicle exemption to include vehicles titled under Chapter 341 of the Wisconsin Statutes and/or registered under Chapter 342 of the Wisconsin Statutes (See exemption 3 under definition of "Business Contract"). This change would clarify that a lease of any titled vehicle (including trailers) would be exempt from the Bill's coverage.
- Clarify what appears to be the intent in exemption 10 to include *all leases* that allow the customer to terminate an auto-renewal provision upon one (1) month's notice (See exemption 10 under definition of "Business Contract").
- Add exemption for a lease to, or purchase of services by, a Federal, state or local government entity (See new exemption 11 under definition of "Business Contract").

(2) DISCLOSURE REQUIRED

- Change the threshold for applicability from "30 days" to "one month" (See 134.49(2)(a)). This technical change is to acknowledge that not all months are 30 days.
- Provide that a seller can satisfy the disclosure requirement if either (i) the auto-renewal provision is conspicuous or initialed by the customer in the Business Contract or (ii) the customer signs a separate disclosure form (See 134.49(2)(a)(2)). A requirement that the customer sign a separate document or initial a page, in addition to the customer's actual signature on the document, seems unnecessary if the required disclosure itself is conspicuous. For example, a customer's jury trial waiver (which is an important provision in any contract) generally appears in all caps. There is no reason this same standard should not also apply to an automatic lease renewal provision.
- Inasmuch as the rent during most automatic renewal terms is the same as the rent applicable during the initial lease term (and does not increase), to reflect market practice, it would be appropriate to change Section (2)(b)(3) to allow the disclosure statement to either state what the renewal rent would be or describe the increase in rent should there be one. (See 134.49(2)(b)(3)).
- Both in Section (2)(c) and a proposed new Section (4)(b), it should be made clear that if the customer actually elects to renew or extend the contract, whether or not the seller has actually complied with the disclosure or notice requirements of the Bill, the contract should continue in effect and the seller should not be penalized for failing to comply with such disclosure or notice requirements. Customers should not be allowed to use the Bill as a means to rescind its election to renew merely because the seller did not technically comply with the Bill. As currently drafted, the Bill would allow a customer to affirmatively renew the contract, enjoy the use of the equipment and/or services for some period of time after the expiration of the original term of the contract, and then, not only cancel the contract, but possibly recoup any rent paid during the renewal term due to the seller's technical violation of the Bill's notice and/or disclosure requirements. This benefit to the customer amounts to unjust enrichment. (See 134.49(2)(c) and proposed new (4)(b)).

(3) NOTICE REQUIRED

• Increase outside window for notice from "45" to "90" days (See 134.49(3)). This is a more reasonable timeframe within which sellers can be sure to take action to comply.

(4) MANNER OF GIVING NOTICE

- Permit notice also to be given by a recognized overnight courier service (See 134.49(4)(a)). Common industry practice permits material and other important notices to be given in this manner.
- As described above, clarify that notice is not required if the customer elects to renew the contract (See proposed new Section 134.49(4)(b)).

(5) REMEDIES

Revise the remedies provision to provide that (i) the auto-renewal would be unenforceable if the seller did not comply with the Bill's notice and/or disclosure requirements and the customer did not otherwise elect to renew the contract, and (ii) in such event, the customer may terminate the contract upon written notice to seller, and claim damages resulting directly from the seller's non-compliance, BUT, customer would still be obligated for payments due during the renewal period (See 134.49(5)). In the event of a violation by a seller of the Bill's notice and/or disclosure requirements, the customer should not reap a windfall in the form of the free use of equipment or services during an automatic renewal period. A customer's remedies should be limited to the ability to terminate the renewal period (if it did not otherwise elect to renew the contract) and to make a claim for any actual damages; however, the customer should remain obligated to pay the contractual rent for any period of time that it received the benefits of the use of the equipment or services after the end of the initial term. As drafted, the Bill would allow a customer to enjoy the benefits of services or the use of equipment (as income-producing property in its business) for an indefinite period of time after the initial term ends, and then, whenever it sees fit to do so, terminate the renewal period and sue the seller for double damages, leaving the seller uncompensated for the services or equipment it actually provided to the customer and for which the customer received the benefits). This result would amount to unjust enrichment.

(6) SEVERABILITY

• Clarify that violation of the statute will not affect the enforceability of the remaining provisions of the contract or seller's rights under the contract (See new Section 134.49(6)). This is a clarification preventing the Bill to have an effect which we understand was not intended by the sponsors.

SECTION 2. INITIAL APPLICABILITY

• Provide that the statute would apply only to contracts entered into on or after the effective date of the statute (See Section 2. Initial applicability.). A retroactive application of this Bill would be unduly burdensome on sellers. The Bill should apply only to new leases entered into after the Bill's effective date.

Looking at other states, automatic renewal statutes in Illinois, Missouri and North Carolina pertain only to contracts with consumers for personal, family or household use. Statutes in New York and Rhode Island deal with business contracts but focus on notice to lessees unlike the expansive provisions of Senate Bill 190 outlined above.

I appreciate the opportunity to offer these comments on behalf of the Equipment Leasing & Finance Association (ELFA)

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SB 190: SMALL BUSINESS PROTECTION

PREPARED FOR: SMALL BUSINESS, EMERGENCY PREPAREDNESS, TECHNICAL COLLEGES, AND CONSUMER PROTECTION

Senate Bill 190 protects small businesses from hidden automatic renewal clauses in equipment and service contracts. This is an extremely important bill for the small businesses of our state. It is legislation that the small business owners in every legislative district understand.

This legislation evolved from many calls to our WIB member hotline. We have heard many complaints about automatic renewal clauses hidden in contracts. This bill came about because of abuses and the growing disparity in bargaining power between large and small businesses. Small businesses cannot avoid these hidden clauses unless they can do without such essential services as: waste hauling, credit card processing, uniform and towel services, computer hardware/software leases and shop equipment leases.

In this packet we have included some actual examples of these contracts. In one the automatic renewal clause was the 11th page of 16. Notice the size of type in the first example for credit card processing. In addition contract dispute resolution can be extremely difficult. One of the contracts calls for <u>binding arbitration</u> that must take place (by contract) in Collin County Texas.

Small business owners must constantly track the expiration date and the period for giving notice for each of these contracts. A small business can typically have up to 10 of these contracts. It is easy to trap the small business into continuing a contract that is no longer needed or wanted. SB 190 does not eliminate these clauses. It simply requires that the business owner be notified upon signing that the clause exists and that he also be notified before the clause will take affect.

Thirteen states have adopted or are considering some type of automatic renewal clause legislation. It is an issue whose time has arrived and Wisconsin business owners are looking for relief. WIB strongly encourages the committee to pass this much needed legislation to help protect the small business owners of Wisconsin.

Credit Card Processing Agreement

This Credit Card Processing Agreement ("Agreement") is made by and among: (1) the bank indicated on the Merchant Processing Application ("Bank"), being either National City Bank of Kentucky of Louisville, Kentucky or Humbold Bank of Eureka, California or Woodlorest National Bank of Houston, Texas; (2) Certified Merchant Services, Ltd. ("CMS") and (3) the business entity indicated on the Merchant Processing Application ("Merchant"), and is subject to the acceptance of Bank and CMS. Merchant desires to accept credit cards validly issued by members of Visa U.S.A., Inc. ("Visa") and MasterCard International, Incorporated ("NasterCard") ("Cardis"). CMS and Bank deairs to provide credit card processing services to Merchant. Therefore, Merchant, CMS and Bank agree as follows:

1.1 Exclusivity

Merchant arms that it will not use the service of any comments and entity or person other than Bank and CMS for the processing

Merchant agrees that it will not use the service of any corporation, entity or person other than Bank and CMS for the processing of Card transactions.

1.2 Subcontractors

Merchant agrees that it will not use the service of any corporation, entity or person other than Bank and CMS for the processing of Card transactions.

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1.2 Subcontractors

Morchant actrowdedges that Bank and CMS may provide services through contracts or subcontracts with third parties.

1.3 Rules

Visa and MasterCard ("Association") rules ("Rules"), as presently in effect and as they may be amended from time to time, are hereby incorporated into this Agreement by reference and made a part of this Agreement as though tally sat forth herein. Morchant actnowledges that all transactions are subject to the Rules and agrees to comply with the Rules as they may exist from fine to time, and that any violation of the Rules by Merchant shall constitute a breach of this Agreement and may, at the option of Bank and CMS, be grounds for terminating this Agreement.

2.0 Rights, Duties and Responsibilities of Merchant

2.1 Transactions

Merchant will honor Cards and complete Sales Drafts (defined below) in conformity with the terms of this Agreement and the Rules, which among other things include:

(a) Merchant will honor, without discrimination, any Card property tendened by a Cardholder. Cardholder means a person possessing a Card and properties to be the person in whose name the Card is issued. Merchant will not establish a minimum or modimum transaction amount at the time of the transaction in Card Present Transaction", Merchant will lifensity the Cardholder (b) if the Cardholder and the Card of the Card Present Transaction", Merchant will lifensity the Cardholder and choice to the Sales Draft of the transaction of the Tardholder transaction amount at the since of the transaction for the Card of the Card Interest of the transaction of the Card of the Card Interest of the Card of the C

merchandise or services included in a Sales Draft, and if Meichant receives such payments, Merchant will remit from promptly to Bank.

(g) All disputes between Merchant and any Cardholder relating to any Card transaction will be settled between Merchant and the Cardholder. Norther CMS nor Bank bears any responsibility for such transactions.

(f) Merchant is responsible for its employees actions while in its employ.

2.2 Authorization

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2. Authorization

Merchant will obtain a prior authorization via electronic terminal or similar device before completing any transaction. Merchant will tolke were presented and must note on the Sales Draft the authorization number. Where authorization is obtained, which is transaction authorization authorization authorization is obtained. Merchant will be deemed to warrant the true identity of the customer as the Cardholder. Transactions will be deemed hereful to warrant the true identity of the customer as the Cardholder. Transactions will be deemed hereful to cards that are explicit, whether or not an suitorization has been obtained. If Merchant authorizations will be deemed invalid to reach the card will be unable to read the magnetic strips on the Card, Merchant will obtain an imprint of the Card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Bank and CMS for propessing. Each of Merchant's outlets is required to have be own electronic terminal or similar device, and all own printer and imprirate with an accurate Merchant plate, for use when its electronic printer is not functional or when the Card semiperior similar device, and by the electronic terminal, Merchant understands that sales cardied at one books on may not be processed through a terminal at enroller to the authorization request. Merchant must attempt to obtain the Card explantion does and toward it as pear of the authorization request. Merchant will use a sales draft or offer form approved by CMS and Bank ("Sales Draft") to document each Card transaction.

constitute a guarantee of payment, but only indicates evisible crock, and may be authorized subject or chargeback.

23 Sales Drafts:

(2) Membart will use a sales draft or other form approved by CMS and Bank ("Sales Draft") to document each Card transaction. Each Sales Draft will be leighly imprinted with: (i) Membart is name and account number; (ii) the information embosed on the Card presented by the Cardinoloider jeltime electronicaty or manualty; (ii) the date of the transaction; (ii) a brief description of the goods or services involved; (iv) the transaction authorization number; (iv) the total amount of the sale (including any applicable taxes) or roads transaction; and (iv) all adjacent to the spinature land, an notation that all sales are fine, if applicable, Membart may not require the Cardinolder to sign the Sales Draft must be signed by the Cardinolder in Membart presence. Membart should refain the Card while the purchaser is signing in order to parkorm signature verification. A transaction amount on the Seles Draft and the cardinolder in Membart presence. Membart should refain the Card while the purchaser is signing in order to parkorm signature verification. A transaction amount on the Seles Draft and the sales are signature or the Seles Draft and the sales are signature or the Seles Draft and the sales are selected and the Card Are th

credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Pulses may require).

(e) if Merchant utilizes electronic authorization and/or date capture services, Merchant will enter the data related to a sales or credit transaction into a computer terminal or magnetic stipe reading terminal no later than the close of business on the date the transaction is completed. If Merchant provides its own electronic terminal or similar device, such terminals must meet CMS' requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or electronic processing systems, and extra read provide twithin 45 days shall be automatically purpor and exceed from the processing system, and are not recoverable. Merchant shall indemnify and hold CMS and Bank harmless for eny and all loss assained by Merchant for said purpor transactions. It is Merchant's responsibility to close, belance, and reconcile bachtes daily (except and days when Merchant's place of business may be deced), and to deleted discrepancies between transactions course of business and that CMS and Bank harmless that minor discrepancies do cour in the normal course of business and that CMS and Bank harmless of course of business and that CMS and Bank value their best efforts to correct discrepancies do cour in the normal course of business and that CMS and Bank values their best efforts to correct discrepancies one ontified by Merchant and the Merchant's responsibility to monitor and reconcile its Merchant Account vigitantly in order to detect discrepancies and the Merchant's responsibility to monitor and reconcile its Merchant and course of business and that CMS and Bank values there there the testificity of detect discrepancies.

2.4 Prohibitions
(a) Merchant is not authorized to accept mail or phone order transactions unless specifically authorized by Bank and CMS.
Acceptance of such transactions without written authorization from Bank and CMS will constitute a breach of the Agreement.
(b) Merchant may not process for payment any transaction(s) representing the refinancing of an existing obligation of a Cardholder or any transaction not originated as a result of a sale directly between Merchant and a Cardholder's account or any properties of the propert

unreadable.

(i) Merchant shall not deposit any transaction for the purpose of obtaining or providing a cash advance. Any such deposits shall be grounde for immediate termination of this Agreement. Owners, partners, officers and guarantors of Merchant and any of their relatives are prohibbled from submitting parasactions transaction to their own benticards.

(e) Merchant must notify Bank and CMS in writing, which notice must be received by Bank and CMS within 10 business days of such change, of any changes to the information in the Merchant Processing Application, including but not limited by:

(ii) A change in the basic nature of its business; including selling products or services not related to its current business; (iii) A change in the basic nature of its business; including selling products or services not related to its current business;

Agreement assumes any interest in Merchant's business.

Fakue to provide such notice may be deemed a material breach and shall be grounds for termination of this Agreement, if an the changes listed above occurs, Bank and GMS shall have the option to rengiosiate the terms of this Agreement, or provide days notice of termination. Merchant is liable to Bank and CMS for all losses and expenses incurred by Pank and CMS arout of a failure to report changes to Bank and CMS. In addition, Merchant will provide updated information to Bank and CMS arout of a failure to report changes to Bank and CMS. In addition, Merchant will provide updated information to Bank and CMS.

(f) Morchant shall not accept or deposit any fraudulers transaction and may not under any circumstance present for processin credit, directly or indirectly, a transaction which originated with any other merchant or any other source; nor may Merchant of a single transaction between 2 or more Sales Drafts or attempt multiple adholizations on a single transaction. Merchant deposits any such transaction, Merchant may be immediately terminated and Bank may hold it and/or demand a reserve pursuant to this Agreement.

(g) Menchant will not deposit duplicate transactions. Merchant shall be debited for any adjustment for duplicate transactions shall be liable for any penalty fees reliating to Merchant shall not deposit duplicate transactions. Merchant will be liable for any penalty fees reliating to Merchant shall not present a Sales Draft until the goods have been shipped or the services have been performed Merchant shall not present a Sales Draft until the goods have been shipped or the services have been performed Merchant shall not present a Sales Draft until the goods have been shipped or the services have been performed Merchant shall not present a Sales Draft until the goods have been shipped or the services have been performed Merchant shall not present a Sales Draft until the goods have been shipped or the services have been performed Merchant bas otherw

Merchant has otherwise performed all of its principal obligations as the political problems.

2.5 Charge-backs

Merchant shall be fully liable to CMS and Bank for all transactions returned to CMS or Bank for whatever reason, other flowers as "charge-backs". Merchant aligned movem as "charge-backs". Merchant agree accept fielbility for charge-backs and will be liable to Bank and CMS in the amount of any sale for which the Cardholder dispose to killing of the sale. Merchant authorizes CMS and Bank to offset from incoming transactions and to debit Merchant's transactions, and to debit Merchant's account, any Reserve Account (defined below), or any other account held at Bank or at any other financial institution the em of all charge-backs. Merchant will fully ecoperate with CMS and Bank in complying with the liese regarding charge-back abundles a half be personally liable for all charge-backs. The Charge-back Fee shall be charged as stated in the Merci Processing Application/Agreement for each Charge-back received by CMS for Merchant.

Guarartors shall be personally labels for as chargedeack. The Chargedeack resisted by CMS for Merchant.

2.6 Excessive Activity

Merchants presentation to CMS of Excessive Activity will be a breach of this Agreement and cause for immediate termina

"Excessive Activity" means, during any morthly period, and for any one of Merchants terminal senticiation numbers merchant identification numbers, chargebeacks and/or retrievel requests in excess of one percent (1%) of the average mortolar amount of Card transactions or returns in excess of 3% of the average monthly dollar amount of Sales Drafts or sexceeding 25% of the dollar volume indicated on the Merchant Processing Application. Merchant authorizes Bark and upon the occurrence of Excessive Activity, to take such additional actions as elimen of them may deem necessary, incluse but not limited to, suspension of processing privileges or creation or maintenance of a reserve account in accordance with

but not limited to, suspension or processing with an ACH receiving depository institution acceptable to Bank one or it commercial checking account(s) to facilitate payment for Card transactions (collectively, the "Merchant Account"). Membrain maintain sufficient funds in the Merchant Account to eccommodate ell transactions, including but not failted to less, fines maintain sufficient funds in the Merchant Account to eccommodate ell transactions, including but to the filled to less, fines maintain sufficient funds in the Merchant Account. Merchant Invocably authorities CMS and Bank may terminate this Agreement if Merchant does not maint at all times sufficient funds in the Merchant Account. Merchant Invocably authorities CMS and Bank to dobit the Merchant Invocably authorities CMS and Bank to dobit the merchant account and CMS or a CMS affiliatio. Merchant also author CMS or Bank and or agents to dobit the Merchant Account for any fees due such vendor or agent under this Agreement and under any other promote them without a consent, CMS or Bank may immediately terminate this Agreement and may take other actions necessary to protect them without discorretion.

Merchant must obtain prior written consent from Bank and CMS to change the Merchant Account. If Merchant does not get consent, CMS or Bank may immediately terminate this Agreement and may take other actions necessary to protect them withir discretion.

(b) Bank will deposit all net funds evidenced by Sales Draits to the Merchant Account with funds evidenced by submitted Sales Draits to the fight to delay, within their discretion, crediting the Merchant Account with funds evidenced by submitted Sales Draits the right to delay, within their discretion, crediting the Merchant Account with funds evidenced by submitted Sales Draits the right to delay, within their discretion, crediting the Merchant Account with funds evidenced by submitted Sales Draits and the sale of the sale of

Sank have been paid in full, in the event Merchant changes the Merchant Account with the consent or AWS and setting authorization will apply to the new account and to any other account. Merchant antinains at any other financial institution.

2.8 Security interest in and lien upon: (i) all funds at any time in the Merchant Account, regardless of the source of such funds at seasity interest in and lien upon: (ii) all funds at any time in the Merchant Account, regardless of the source of such funds at any time in the American Account, regardless of the source of such funds at any time in the American Account, regardless of the source of such funds, (iii) present and future Seles Datis, an any amount which may be due to Merchant under this Agreement, Including, without kimitation, all rights to receive any paym or redits under this Agreement (collectively, the "Sociared Assets"). Merchant agrees to provide other security to CMS and upon request to source its obligations under this Agreement; now eviding or ister entered into between Merchant, CMS, at affiliate, and/or Benk. This security interest may be exercised by CMS and Benk without notice or demand of any kind by maximum and the social and the security of the security interest and the security of the disposition of the Securid Assets.

(b) Pursuant to Article 9 of the Uniform Commercial Code, as amended from time to time. CMS has control over and may (the disposition of the Securid Assets, and Benk agrees to comply with such direction without further consent of Merchant represents and warrants that no other person or entity has a society interest in the Securid Assets. With respectable law and in equity. Merchant will obtain from Bank and CMS written consent prior to granting a security interest and excited interest of the form the authorized on the security of the security of the security interests on a tring the pay. Merchant agrees that this is a contract of recourser and Bank and CMS and required to the amotion for neited from a benitupory action automatic

Merchant agrees not to contest or coject to any motion for restriction as submitted. CMS and appoints CMS that stomey in fact to sign its name to any francing statement used for the perfection of security interest or long granted hereunder.

29 Electronic Commerce Transactions

(a) Merchant must get CMS' consent to process electronic commerce ("EC") transactions, and Merchant may process transactions only if the transactions processed via EC are highly risk and subject to a higher incidence of the apprehence. Merchant submits EC transactions without CMS' consent, CMS or Bank may immediately terminate this Agreement. Merchant submits EC transactions without CMS' consent, CMS or Bank may immediately terminate this Agreement. Merchant is for all chargebacks and losses related to EC transactions, whether or not; it EC transactions have been encrypted, or ill Merchant has obtained CMS' consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive provision of this Agreement or otherwise validate a fraudulent transaction. Merchant is responsible for contracting with a party payment engine, payment gateway or other intensit service provider. Merchant must ensure that such first parties the Sales Drafts to CAS and Bank in an acceptable format. All communication costs related to EC transactions are Merchant responsibility. Merchant understands that CAS will not manage the EC telecommunication of the Linted State LSC. CMS, Merchant resource and resonate provider in the Merchant responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United State LSC. CMS, Merchant resource and the validation of the United State and CAS will be submitted amount, provider, Merchant are sourced authorized amount, provider, Merchant resonated obtain a second authorized amount if the Sales Draft amount swifth 15% of the Cartifolder. Merchant resonate and freund policy of the Cartifolder, policy, if the Merchant store according to the authorized

to all Recuming Transactions: a) The Cardholder's witten authorization must be retained for the duration of the recuming charges and provided promi response to a Cardholder's request for copy.

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c) Merchant shall type or print legibly, on the "signature line" of the Sales Draft for Recurring Transactions, the words "Rec

of Merchant shall type or print legibly, on the "signature line" of the Sales Draft for Recurring Transactions, new order transaction.

(1) The Cardholder's written authorization must include the amount of the transaction, frequency of charge and the durat time for which Cardholder's existing to granted.

(a) If the Cardholder's decist to renew a Recurring Transaction, the Cardholder must complete and deliver to Merchant a written Recurring Transaction request.

2.11 Multiple Sales Slips.

Merchant shall include all items of goods and services purchased in a single transaction in one total amount on a single Draft, except (a) in the case of purchases in separate departments of a multiple department store or (b) in a partial pely delayed delivery or advanced deposit Stuation described in this Section. Merchant may only effect a transaction with only I the amount due included on a single Sales Draft.

(i) When the balance of the amount due is paid by the Purchaser at the time of sale in cash or by check or both, or (ii) When the purchaser executes two separate Sales Drafts in a delayed delivery sale. In such case, a depost is madernated the purchaser executes two separates sales Drafts in a delayed delivery sale. In such case, a depost is madernated and payment of the balance is tendered by completion of a second Sales Draft, the latter Draft being conditioned upon delivery of merchandles or performence of services. Authorization is required for both Sales is and Memband shall note on the Sales Draft the words "deposit" or "halance," as appropriate. The Sales Draft tabeled "ball memband shall note on the Sales Draft the words "deposit" or "halance," as appropriate. The Sales Draft tabeled "ball memband shall note on the Sales Draft the words "deposit" or "halance," as appropriate. The Sales Draft tabeled "ball note on the Sales Draft the words "deposit or "halance," as appropriate.

shall not be presented until the goods are delivered or services performed. 2.12 Mail Orde:

shall not be presented until the goods are delivered or services performed.
2.12 Mail Order:
CMS and Bank caution against mail order or telephone order transactions or any other transaction where the Cardholder and Card are not present, due to the high incidence of customer disputes. Merchant may solicit or accept mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ('mail/telephone orders') only upon CMS' prior written authorization. Mail/telephone orders completed without prior written consent of CMS or after will be a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the Rules. Merchant may be required to use an address volification service ("AVS") on mail/telephone transactions. AND not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or validate a transfactor transaction whereast will obtain the explication date of the Card for a mail/telephone order and submit the explication date when obtaining authorization of the Card for a mail/telephone order transactions. Merchant will type or print legibly on the signature line of the Seles Draft the following applicable words or letters: telephone order of "TO"; or mail order or "MO".

2.13 Future Delivery
Merchant will not present any Seles Draft to Bank or CMS for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without CMS prior written authorization. It Bank or CMS have previously given such consent, Merchant represents and warrants to Bank and CMS that Marchant will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. Merchant will into rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. Merchant will not predit or any proceeds or credit to provide for the delivery with elicition working capital to provide for the delivery with elicit

2.14 Laws Merchant will comply with all federal, state, and local laws, rules and regulations, as amended from time to time. 3.0 Rights, Duries, and Responsibilities of Bank and CMS

Membrant will comply with all federal, state, and local laws, rules and regulations, as amended from time to time.

3.0 Rights, Duthes, and Responsibilities of Bank and CMS

3.1 Deposits

(a) Membrant agrees that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, it U.S.C. § 365, as amended from time to time. Subject to this Section, Bank will deposit to the Membrant Account at net funds evidenced by Sales Drafts (whether evidenced by sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and tie Rules and will provide Membrant provisional credit for such funds (less recorprised of any credits), acquisitions, chargebacks or fees). It Bank is CMS reasonably believes that a chargeback or credit is filely the respect to any transaction or Sales Draft Bank and CMS have accepted, Bank and CMS may withhold payments due Membrant under this Agreement until such time that it) Bank is charged back by the Issuing bank (in such event, Bank shall retain the funds); it) the period of time by which the Cardroider may depute the Sales Draft and the issuing bank may exercise its chargeback rights has expired; and/or it) Bank and/or CMS determines that a chargeback on the Sales Draft will not occur. Membrant acknowledges that its objection to CMS and Bank for all amounts owed under this Agreement arise out of the same transaction as Bank's obligation to deposit unds to the Membrant Account.

(b) Notwithstanding subsection (a) of this Section, under no circumstance will Bank or CMS be responsible for processing readits or adjustments related to Sales Drafts not originally processed by Bank and CMS. All Sales Drafts and deposits are subject to audit and final cheeding by Bank and CMS. All Sales Drafts and deposits are subject to chargebacks and adjustments in accordance with the Rules and this Agreement, whether or not a transaction is charged back by the Card issuer, Final credit for those conditional funds will be credited by C

Merchant hereby incentines and noise LMS and Bank natimess for any loss of consequence density sections of the same as a result of delayed funds.

3.2 Payments
Bank will pay to Merchant within 3 business days after the date the Bank receives each transaction, unless Marchant is otherwise informed by Bank or CMS, the total face amount of each Sales Draft, less any credit vouchers, discounts, less or adjustments determined daily or morthy. All payments, credits and charges are subject to such and final checking by Bank and CMS, and prompt adjustments may be made for inaccuracies discovered.

3.3 Acceptance
Nowthitstanding any other provision of this Agreement, Bank and CMS may refuse to accept any Sales Draft, or revoke its prior acceptance, in any of the following circumstances:

(a) The sale giving fise to such Sales Draft was not made in compliance with all the terms and conditions of this Agreement including Card Associations' regulations, and applicable laws and regulations of any government authority; or

(b) The Cardholder disputes historic lability.

In the event of a revocation of a prior acceptance of a Sale Draft, Bank may withdraw from the Merchant Account or Reserve Account any amount previously poid to Merchant for such Sales Draft.

3.4 Customer Service
Bank and CMS will provide electronic draft capture and mortifyly scrivity statements, and will assign oustomer service provided under this Agreement including, but not limited to, disbursement of funds, account charges, monthly statements and charges and account allowed the Agreement including, but not limited to, disbursement of funds, account charges, monthly statements and charges and account theorems are found to the Sales and other communications from Merchant selecting to the services provided under this Agreement including, but not limited to, disbursement of funds, account charges, monthly statements and charges and account allowed to the services that the disbursement of Merchant's funds for any reasonable period of fine doemed.

«LD Account Monitoring
Merchant acknowledges that Bank and CMS will monitor Marchant's daily deposit activity. Merchant agrees that Bank and
CMS may, upon reasonable grounds, divent the disbursement of Merchant's funds for any reasonable period of time deemed
necessary to investigate suspictus or unusual deposit activity. Bank and CMS will make good faith efforts to notify Merchant or
ny such diversion. Bank and CMS shall have no fability for any losses, either direct or indirect, which Merchant may attribute to
any diversion of funds disbursement. Any funds diverted shall be deposited immediately into a non-intensat bearing account at
Bank, and not be released until such time that questionable/suspect/ fraudulent transactions have been resolved to the Bank's
and CMS' satisfaction.
S.O Warranties

Bank, and not be reseased as a season and a season and a season and CMS all of the following:

1.00 Werramities

Menchant represents and warrants to Bank and CMS all of the following:

(a) That all represents and warrants to Bank and CMS all of the following:

(a) That all represents and warrants to Bank and CMS all of the following:

(b) That all representations and statements mede by Menchant or on Menchant's behalf in the Menchant Processing Application, or in any offer document relating to this Agreement, are true, accurate and complete in all material respects. Menchant hereby without an accurate and complete in all material respects. Menchant hereby without an accurate and cMS may utilize credit bureautreporting agencies and/or their own agents. Upon Menchant's request, Bank and/or CMS will provide Menchant with a copy of the results of such investigation.

(b) That Menchant has negated in the laws of the state, county and city in which Menchant is located.

(c) That Menchant has not been terminated from settlement of Card transactions by any financial institution or determined to be in violation of any of the Rules of Visa or Meastaccard except as specifically disclosed in the Menchant has the authority of senter into this Agreement and that the person(a) signification of concessing Application.

(d) That Menchant has the authority of senter into this Agreement and that the person(a) signification or on behalf of Menchant is less authority of senter into this Agreement and that the person(a) signification of the Menchant Processing Application.

(f) That denchant has the authority of senter into this Agreement and that the person(a) signification or on behalf of Menchant is associated and denchant has provided produce or denchant and the supplement of the Menchant Processing Application.

(f) That sent Sales locations engage in the same or substantially similar business activity as that listed on the Menchant Processing Application.

(f) That sent Sales locations are present as the sent of the person of

8.0 Limitation of Ladewy excellent actions and the second and the second action of the second

ANY PARTICULAN PURPOSE.

2. Indemnitication
Merchant hereby indemnities and holds Benk and CMS and each of them, their parent companies, affiliates and/or subsidiaries
and all of its or their officers, agents and/or employees, harmless from and against any and at claims, losses, demands, actions,
sopeness, demanges, fability, and/or causes of action, including (without limitation) attorneys' fees, other costs of defense end/or
collection sees, which in any way result directly or indirectly from:
(a) Any breach of this Agreement or of any warranty or representation made to Bank or CMS by Merchant;
(b) Any damage or loss caused by negligence, fraud, dishonesty or willful behavior by Merchant or any of Merchant's employees,
agents or other representatives, or
(c) Any contention, whether well-founded, baseless or otherwise, that Merchant violated the law or any MasterCard and/or Visa

agents or other represents b) Any contention, whether tule. 5.3 Limitation of Liability

Fuls.

3.3 Limitation of Liability

3.3 Limitation of Liability

3.4 Limitation of Liability

3.6 ank and CMS will use due care in providing services covered by this Agreement and the performance of all services called for in his Agreement shall be consistent with industry standards. The collective liability, if any, of Bank and CMS under this Agreement has Agreement shall be consistent with industry standards. The collective liability, if any, of Bank and CMS under this Agreement or any claims, costs, damages, losses and expenses for which it or they may be legally liability, whether arising in negligence or other tost, contract, or otherwise, will not exceed aggregately the amount of fees paid by Manchart, less interchange and sessesments, over the previous 12 month period, calculated from the date the fability accrued. In no event will Bank or CMS or he's agents, cificers, directors or employees be liable for indirect, special, or consequential damages.

7.0 Display of Materiatics Trademarks.

8.4 Anthart will prominerely display the promotional materials provided by CMS in its place of business, provided, that such seplays are not required if Merchart is prohibited from doing so by government regulation or to the extent expressly exempted by MasterCard or Visa, as applicable. All promotional materials supplied to Merchart by CMS are the property of CMS and, pon termination of this Agreement, Merchart et rutum them to CMS. Macharts shall have the right to use and display the area of the property of the special or other and to cease such usage, whichever is earlier, and then only in compliance with applicable Visa and MasterCard Rutus concerning such usage. Merchart shall have no right to use the proprietary mane and/or symbol of 3ark unless the materials containing such are provided to Merchart, and/or are approved in advance, by Benk. Mercharts so of Visa, MasterCard in advance, by Benk. Mercharts are provided to Merchart, and/or are approved in advance, by Benk. Mercharts so of Visa, MesterCard or other ca

LO Term; Termin 1.1 Term This Agreement si 1.1 Time
This Agreement shall become effective upon acceptance by Bank and CMS and shall continue in full force and effect for a term
of his/p-ax (36) months. This agreement shall auto renew for successive two (2) year terms thereafter unless written notice of
ton-ronewal by the party destings not to renew is delivered to the other parties hareful at least ninety (90) days, but no more than
the hundred-twenty (120) days prior to the expiration of the initial or any renewal term.

1.2 Termination

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2.3 Fermination

3.4 Greenwalt through the force of the expiration of the initial or any renewal term.

1.5 Termination

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8.3 Action Upon Termination in this Agreement for any reason, Merchant authorizes Bank to withhold and discontinue the discoursement of all funds evidenced by Safes Drafts and other payment transactions in process. Collected funds may be place in the Reserve Account (defined below) until Menchant pays any outstanding charges or losses.

(a) Merchant hereby authorizes Bank, upon termination of this Agreement or at any time upon Bank's and CMS request an within Bank's end CMS sole discretion, to establish and maintain a deposit account (Trasenve Account) at Bank in an amount reasonably determined by Bank and CMS to be appropriate to protect bank's and CMS; thereasts under this Agreement. OB Bank and CMS and the obstablish or maintain funds in the Research Account, with or without prior notice to Merchant. Bank and CMS may deposit into the Research Account into its would otherwise be obligated to pay Merchant, for the purpose of establishing or maintaining the Research Account in accordance with this section if it determines such action is appropriate to protect its interest. Bank's and CMS flight to aums owed them by Merchant pursuan to this Agreement shall in on way be limited by the beliance or edistance of the Research Account, including their security Interest therein, shall survive the termination of this Agreement. Bank and CMS rights were account, and another the Agreement and anothly fee for maintenance of said Reserve Account against any outstanding amount and captured the account and the Agreement or any other Agreement between Merchant and Bank'CMS. Also, Bank and CMS me exercise their rights under this Agreement to endough any appropriate the release of Reserve Account funds before 270 days following the effective date termination of this Agreement, provided however, that the release of Reserve Account of the Reserve Account funds before 270 days following the effective date termination of this Agreement, provided however, that the release of Reserve Account of the Reserve Account the effective date t

8.4 Rights
The rights conterned upon Bank and CMS in this Agreement are not intended to be exclusive of each other or of any other right and remedies of Bank and CMS under this Agreement, at law or in equity. Rather, each and every right of Bank and CMS at ta or in equity will be cumulative and concurrent and in addition to every other right.

8.5 Terminated Merchant File.

8.5 Terminated Merchant File (CTM) maintained for cause, Merchant acknowledges that Bank and CMS may be required to report Merchant business name and the names and other Identification of its principels to the Combined Terminated Merchant File (CTM) maintained by Visa and MasterCerd. Merchant shall hold harmless Bank and CMS for claims which Merchant may raise as result of such reporting.

8.5 Submitted Sales Dratts
Notwithstanding any termination of this Agreement, this Agreement shall remain in full force and effect with respect to any Sale Dratt which is actually delivered to Bank or CMS by Merchant and not returned to Merchant prior to Bank's extending creciterefor.

9.0 Notices
All notices under this Agreement shall be deemed delivered when mailed, postage prepaid, addressed as follows:

(a) CMS/CERTIFIED MERCHAINT SERVICES
P.D. Box 250077
Plano, TX 75026-0077

Representatives of Bank and CMS may, during the normal business hours, inspect, audit and make records of Merchant's books accounts, records and files pertaining to any Card transactions. Merchant will preserve its records of any Card sale and an refund or Cordit adjustment thereon for at least 7 years from the date of such sale, credit, refund or adjustment.

10.2 Confidentiality.

Merchant will not turn to be the contractions of the contractions of the contractions of the contractions of the contractions.

True commences to the sort its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Bank and CMS (including without limitation the terms of this Agreement and will safeguard such information and data by using at least the same degree of care that Merchant uses to protect its owner-instantial information.

Out.2 Force Majeura

Bank and CMS shell not be table for any damages resulting from any performance or non-performance caused by circumstance Bank and CMS shell not be table for any damages resulting from any performance or non-performance caused by circumstance beyond Bank's antior CMS' control including, but not limited to, Acts of God, fire, food, war, government action, tabor trouble or shortage, or other events of similar effect in connection with Bank's and CMS' obligations herein.

10.4 Amendments

enotage, or other events of similar effect in connection with Bank's and CMS dougations brother.

10.4 Amendments

Bank and CMS may propose amendments or additions to this Agreement. Bank and CMS may inform Merchant of a propose change in a periodic statement or other written notice. Merchant will be deemed to have agreed to the change it it continues to proser transactions to Bank and CMS after 14 days from the date notice of the proposed change was sent, if Merchant doe not agree with a proposed change, in may terminate this Agreement by notifying CMS in writing thin 14 days of the malin of the notice of proposed amended terms. Notwithstanding the previous sentence, CMS is entitled to increase any fee due t an increase imposed by Visa, MasterCard, or telecommunication vendors without giving Merchant the right to terminate this Agreement.

10.5 Construction

All section headings are for descriptive purposes only, and the language of such section shall control.

This Agreement may not be assigned by Merchant, directly or by operation of law additional and the section shall control.

10.5 Bank and/or CMS may assign this Americant.

All section headings are for descriptive purposes only, and the language of such section shall control.

10.5 Assignment
This Agreement may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Bank an
CMS. Bank and/or CMS may assign this Agreement at any time upon written notice to Merchant.

10.7 Attorney's Feet
Merchant shall be liable for and shall indemnity Bank and CMS for any and all attorney's feets and other costs (inducing collection costs) and expenses paid or incurred by the Bank and/or CMS for resulting from any breach by Merchant of this Agreement.

10.8 Governing Law, Venute
Any action or proceeding arising out of this Agreement by or against Bank or CMS shall be initiated and maintained under the jurisdiction of the state of Texas with venue in the courts of Collin County. This Agreement shall be constanted and governe by the laws of the state of Texas. If any provision of this Agreement shall be held to be invalid, liegal, or unenticeable, it is creating provisions shall remain in effect.

10.9 Disputs Resolution

Any disputs arising under this Agreement, shall be promptly submitted to binding arbitration in accordance with the natices of the American Arbitration Association in Collin County, Texas and in accordance with the corresponding laws concerning arbitration and the provisions are all the prompting submitted to be accompanied and convicted in any count of competent practical interior. The arbitrator shall be sure the right to render equitable, as well as other, awards and melet. Without interior who is experienced and inconvergence like in the field of industry relating to the subject matter of this Agreement in proper and arbitration association for (a) appoint single arbitration who is experienced and inconvergence like in the field of industry relating to the subject matter of this Agreement (b) require at settiment of reason for such award of decision.

10.10 Weiver

10.10 Walver
Nother the failure nor any delay on the part of Bank or CMS to exercise any right, remedy, power or privilege hereutrics six nother the failure nor any delay on the part of Bank or CMS to exercise any right, remedy, power or privilege hereutrics with report to any commence be construed a any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed a walver of such right, remedy, power or privilege with respect to any occurrence. No walver by a purty hereutrider shall be effective unless it is in writing and signed by the party making such walver, and then such waiver shall apply only to the extens specifically stated in such writing.

10.11 Survival

10.11 Survival

Each and every indemnity provided for in this Agreement shall survive the termination of this Agreement. Further, Sections 2.1

2.7, 2.8, 8.3, and all provisions of Section 5.0 and 6.0 shall survive termination of this Agreement.

10.12 Cooperation

Heachart agrees to execute, file and record such statements, notices and certificates as Bank or CMS may reasonably reque to preserve and protect Bank's and/or CMS' interests.

to preserve and protect Bank's and/or CMS' interests.

10.13 Entire Agreement

This Agreement and all other documents executed or submitted by Merchant in connection herewith, or incorporated herein to reference, constitute the entire agreement between Merchant, on the one hand, and CMS and Bank on the other.

11.1 Merchant Fees
Marchant will pay Bank and CMS tees for services, forms and equipment in accordance with the rates set forth on the Merchant New Processing Application. Such toes will be calculated and debited from the Merchant Account once each business day or mont as determined by CMS, for the previous business day's or month's achiev, or will be netted out from the funds due Merchan debit of the set of the set of the section 10.4 Merchant agreement. CMS may adjust the fees as set forth in Section 10.4 Merchant agreement. CMS may adjust the fees as set forth in Section 10.4 Merchant debit and charges as considered accurate and final unless Merchant disputes them in accordance with the provisions of Section 2.7(c). Furthermor Merchant understands that every oredit vourble issued will be subject to a transaction fee and there will be no refund of any fee or charges associated with the original transaction.

11.2. Other Amounts Owed
Merchant will immediately pay CMS or Bank any amount incurred by CMS or Bank attributable to this Agreement, including b not limited to charge-backs, fines imposed by Visa or MasterCard, non-sufficient funds fees, and ACH debits that overdraw it not limited to charge-backs, fines imposed by Visa or MasterCard, non-sufficient funds fees, and ACH debits that overdraw it not limited to charge-backs, fines imposed by Visa or MasterCard, non-sufficient funds fees, and ACH debits that overdraw it not limited to charge-backs, fines imposed by Visa or MasterCard, non-sufficient funds fees, and ACH debits that overdraw is arrived to charge-backs, fines imposed by Visa or MasterCard, non-sufficient funds fees, and ACH debits that overdraw is arrived to charge-backs, fines into a report of the contract, not only the master and the funds feet, and the funds feet arrived in the contract, not only the contract, not only the contract, not only the contract of the funds feet and the funds feet and the fund

11.3 Lepts
Merchant authorizes Bank and CMS to debit from the Merchant Account any amounts paid by Bank or CMS to a leash
company on Merchant's behalf, including but not limited to monthly lease payments or other amounts owed by Merchant to the leasing company.
11.4 Taxes

thant shall timely pay all taxes and other charges imposed by any governmental authority on the services provided und

Merchant shall timely pay all taxes and one stagged this Agreement.

11.5 Prior Processor Termination Fee Refund

11.5 Prior Processor Termination Fee Refund

11.6 Prior Processor Termination Fee Refund

11.6 Prior Processor Termination Fee Refund

11.6 Prior Processor Termination Fee Refund

Agreement, CMS may, at their sole and exclusive discretion, either terminate Menchant for such fee up to but not exceeding Agreement, CMS may, at their sole and exclusive discretion, either terminate Menchant for such fee account or cancel the processing agreement with CMS and allow Menchant to transfer back

\$250 Val credits position from account or cancel the processing agreement with CMS and allow Menchant to transfer back

the provious service provider. Any such reimbursament by CMS will occur after 50 days after the MID issued date, provide that Merchant has given CMS a bank statement evidencing the cancellation fee within 60 days after the MID issued date at Merchant is processing with CMS at the time of the reimbursament.

Errns and Conditions

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5. Disconnection of Customer's Phone Number or Europianism of Innerved Services. The change we disconnection of spines assuber as an advancement, we retrainstice of leaguest Services by Camerater will not relate Castomer George is philippaint under their agreement.

6. Payment (Print Advertising and Internet Savices):

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13. Sales Rep. Not Authorized to Make Changes: The sales especialmente of Publisher in an authorize to miss any manuer whatevest is contradiction to the profittion of the profittion of the profittions of the profittions copiesale set fould in this agreement.

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8. This agreement shall be governed by and interpreted in accordance with, the laws of the wate method. Convenes insincipie is precapel place of this ines.

C. Rates include Sales Var where applicable.

D. H. an prinsion of this agriculture is bold to be ununibecuble, such holding deal to an our medialise any other provision beneal, and doir agreement shall remain in tall force and effort.

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124 Gaither Drive Suite 170 Mount Laurel, NJ 08054

Phone: 888.479.9111 Fax: 888.479.1100

EQUIPMENT LEASE CONTRACTFOR LEASES UNDER \$25,000

Leasing Company ("Leasor," "We" or "Us"): Marjin Leasing Corp.

	THE BELLINGS OF THE PROPERTY O				
Casing Silstomer (You')	Truch Home	Services, TNC			
Company Name (Exact business flame). ————————————————————————————————————		WI	54568		
Address: Simes City	County	State State State Partner Partner	ership Prop.		
Phone: 4/5/338	358-9771 SCCOrp. 011	mited Liability Corp.			
Equipment Location: 616 E/m					
Vendor: Address:					
Description (Leased) Equipment (1) and		DOC FEEDL	A (4505)		
PAVASONIC COPIER (1918)	CONSOLE (DS 12)	GAHM A 3/67			
LAEK M 312913	LACLB 333838		Payment Freq.		
Payment Schedule:	1\$ 108.62	\$ 325.86	Ouarterly		
21 34	Amount of Each Payment	Security Deposit	Other		
Lease Term (Mos.) Total No. of Payment	s (plus applicable (axes)				
Terms of Lease	35 45	ot repossess, we may also directly debit	and/or sue you for the		
1. You with the testing company) to huy it and then lesse it to you. The Lesse will you want to the testing company) to huy it and then lesse it to you. The Lesse will not begin until we sign it, and once it starts it will committee for the entire term state and above. You will pay us all charges stated above. If you pay late, there will be a late fee of \$20.00 or 15% of the late amount, whichever is more. We may charge you a particular payment to cover the time between delivery and the due date for the flest regular payment will be constituted to the lesse you must return the equipment lar payment will not cover the time between delivery and the due date for the flest regular payment will be covered to us, in good working condition, at your cost (unless we have given you a purchase to us, in good working condition, at your cost (unless we have given you a purchase to us, in good working condition, at your cost (unless we have given you a purchase to us, in good working condition, at your cost (unless we have given you a purchase to us, in good working condition, at your cost (unless we have given you a purchase to us, in good working condition, at your cost (unless we have given you a purchase to us, in good working condition, at your cost (unless we have given you got use or option that you excersive). You agree to be subject to snult in the New Jesse' to said not a late of the classe, and not a late of the Uniform Commercial to the cupit all the description of the equipment. You give us power of attorney to file UCC financing its payment. Will all the your cost (unless we have given you give us pour or all unless we have given you give us pour or all unless we have given you give us or described in this Lesse. To expectite the lease, you also sgeet this is a "true lease" and other taxes relating to your use or all the said on the lease for \$1.00, we will be entitled to all tax benefate, you also sgeet this will be considered as good as your or said liabilities and losses to us relating statements and your gi					
Acceptance of Lease Agreement	This is a hinding contract. It cannot be concelled	d. Read it carefully before signing, and call o	2/23/01		
Signature of Lealing Customer	Scott D. Clarks Print Name of Signer	ou President Title	Date		
X Accepted and Signed by MARLIN LEASING CORP.	Print Name of Signer	Tide	Date		
Personal Guaranty		和1986年中央1987年1987年1988年1988年1988年1988年1988年1988年	COMPANY CONTRACTOR		
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Signature (Individually; No Titles)	· · · · · · · · · · · · · · · · · · ·	dividually; No Titles>	Date		
Acceptance of Delivery	· 注题 工作的产品的工作的基本的工作的工作。	被除的 证据的12个元十二元为15 <u>35的</u>			
I AM AUTHORIZED TO SIGN THIS CERTIFICATE ON BEI	HALF OF THE LEASING CUSTOMER. I CEI KING PERFECTLY. 50077 R. CLOCK	ITIFY TO THE LEASING COMPANY THA	Z/Z6/0/		
Authorized Signature	Name and Title (Please Pri	2404	quipment Delivery Date		

TERMS AND CONDITIONS OF SERVICE AGREEMENT

TERM. Customer-grains to Contractor the exclusive right to collect and tilspose of all of Customer's waste materials as warranted believed fincluding recyclables) for an initial term of three years from the effective bervice date. The serm of this Agreement shall be automatically renewed for like terms thereeffor unless either party shall give written notice of termination by certified mail to the other at least story days prior to the terms thereeffor unless either party shall give written notice of termination by certified mail to the other at least story days prior to the terms therefore or any renewal term. In the event Customer terminates this Agreement or or than as provided above or Contractor terminates this Agreement for Customer's compayment, Customer shall pay to Contractor as liquidated damages a sum or Contractor terminates this Agreement for Customer's compayment, Customer shall pay its most recum monthly celculated as follows: (1) if the remaining form under this Agreement is less than six months, Customer shall pay its most recam monthly charge multiplied by the number of months remaining in the term.

CHANGES AND COST, INCREASES. Because disposal and fuel costs are a significant portion of the cost of Con vactor's services provided hereunder, Contractor may increase the Schedule of Charges proportionarily to reflect any increase in such costs. The Schedule of Charges may also be adjusted from time to time to reflect increases in the Consumer Price Index. Subject to Costomer's approval, the Schedule of Charges and the Consumer Price Index. mey also be adjusted from time to time to reflect increases in the Consumer Price Index. Subject to Costomer's approval, the Schedule of Charges mey be adjusted for reasons other than increases in disposal or fuel costs of the Consumer Price Index. Those changes in the Schedule of charges requiring Customer approval, and changes to the frequency of collection service or the timeont, capacity-had type of equipment used may be agreed to verbally, in writing or by the actions and practices of the parties. The parties hay incorporate additional watte streams as a part of this Agreement so long as: (1) Customer has executed Senerator's Wable Profile, Shiet(s) with respect thereto; and (2) Contractor has approved, in writing, handling such waste streams of Customer. This Agreement shall not the affected by any changes in the Customer's Service Address if such new address is located within Contractor's service area.

WASTE MATERIALS. Customer warrants that the waste materials delivered to Contractor will not contain any hazardous, toxic or radioactive wastes or substances as defined by applicable federal, state, lobal or provincial laws or regulations. Customer acknowledges (Bacing the atlanhed "Contractor's Definition of Special Waste, (dated 02/92), and warrante must the waster materials, delivered to Contractor with not contain any Special Waste, as so defined, these and except (1) as specifically described in the "Generator's Weste Profile Sheet(a)" either the contain any specific to the "Generator's Weste Profile Sheet(a)" either the contain and the "Generator's Weste Profile Sheet(a)" either the contain and the "Generator's Weste Profile Sheet(a)" either the contain and the "Generator's Weste Profile Sheet(a)" either the contains and the "Generator's Weste Profile Sheet(a)" either the contains and the "Generator's Weste Profile Sheet(a)" either the contains and the "Generator's Weste Profile Sheet(a)" either the contains and the "Generator's Weste Profile Sheet(a)" either the contains and the "Generator's Weste Profile Sheet(a)" either the contains and the "Generator's Weste Profile Sheet(a)" either the contains and the "Generator's Weste Profile Sheet(a)" either the contains and the "Generator's Weste Profile Sheet(a)" either the "Generator of the "Generator of the "Generator" either the "Generator of the "Generator anached herato and made a part horself or subsequently provided to and approved, in writing, by Contractor, or (2) incipantal amounts of Special Waste, as listed by Customer in the "incidental-Special Waste Types and Amounts" section of this form. The finciental-Special Waste Types and Amounts' section of this form the finciental-Special Waste Types and Amounts' section of this form the fincient and the fincien tive to the waste many are more localistic contractor a venices; provided movever, marking to and patient in a waste materials excluded from this Agreement shall remain with Customer, and Customer, agrees to independ, defend and half harmless Cummoter against all claims, damages, suits, penalties, lines and liabilities arising out of the breach of the above warrantes including, without limitation, liabilities for violation of laws or regulations, for injury or death to persons or for loss, or damage to property or the environment.

SPECIAL WASTE. If this Agreement contains an approximation of services and equipment for Special Waste, then the following additional forms and conditions that the Special Waste gallvered to Contractor has the components and characteristics meeting the description contained in the Generalists waste Profile Special.

In the event that such Customer's Special Waste is later determined or defined to be a hazardous, to:it or radioactive wasteror substance or if the storage andisposal facility receiving such Special Waste from Contractor crasses operations or is later prohibited, from receiving such waste, then the portion of this Agreement pentaining to such Special Waste may be immediately terminated by Contractor upon notice to Customer.

Customer agrees to comply with the preceptions, conditions and fimiliations contained in Contractor's written notice of approval of such Special Waste.

If manifests or shipping papers are required by law to accompany the Special Waste to the storage or disposal facility, Customer is responsible for preparing all manifests or papers in form and number required by law.

RESPONSIBILITY FOR EQUIPMENT. The equipment turnished by Contractor hereunder shall remain the property of Contractor, and Customer shall have no interest in sven equipment. Customer shall be responsible for all loss or damage to the equipment except for normal wear and ties or for loss or damage resolves from Contractor bandling of the equipment. Turning that up of overload, by weight or volume), indoor or after the equipment, and stall ose the equipment only for its proper and intended purpose. Cut timer agrees to indemnity, defend and hold harmless Contractor against all claims, damages, suits, penalties, times and liabilities for injury or death to persons or loss or damage to properly arising out of Customers use, operation or possession of the equipment. On collection day, Quatomer shall provide unobstructed access to the equipment. If the equipment is inaccessible, Customer will be notified, and any additional collection service or attempt to provide such service shall be charged as an "exital pick-up."

CHARGES AND PAYMENT. Customer shall pay Contractor for his services in accordance with the Schedule of Charges shown on the face of this Agracmant. Where the Schedup of Charges specifically indicates disposar as a component of the charges, disposar shall mean the posted gate rate for disposal at the disposal state of Charges indicates of the charges indicated by Contactor plus an appropriate handing charge. Customer shall be liable for all taxes, tees or other charges imposed by federal, state, local or provincial laws and regulations upon the collection, transportation or disposal of Customer waste materials or the services performed hereunder. Payment shall be made by Customer within an days after receipt of an invoice from Contractor. In the event that any payment is not made when due, Contractor may terminate this Agreement on notice to Customer, recover any equipment on the premises of Guetemer and recover the liquidated damages described above. Contractor may a impose and Customer agrees to pay a late fee for all past due payments not to exceed the maximum rate allowed by applicable law.

RIGHT TO COMPETE. Customer grants to Contractor the right to compete with any offer which Customer receives (or Intends to make) relating to the provision of nonhazartious wasta collection and disposal pervices upon the termination of this Agreement for any reason, and agrees to give Contractor written notice of any such offer and a reasonable opportunity to respond to it.

PAYEMENT DAMAGE. Contractor shall not be responsible for damage to Customer's paverment or other driving surface resulting from the weight of Contractor's vehicles.

ATTORNEY'S FEES. In the event of a breach of this Agreement, the breaching party shall pay all reasonable attempts fees, collection fees and costs of the other party steident to any action brought to enforce this Agreement.

MISCELLANEOUS. If any conflicts exist in this Agreement between terms which are printed and those which are typed or written and under the successors and assigns. The representations, warrapties and indemnifications complined herein shall survive the termination of this Agreement.

(02/92)

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PROCESSING SERVICE AGREEMENT

ACO925

THIS AGREEMENT to effective this Z-1 day of 1911 by and between ACCESS CASH INTERNATIONAL, INC., a Mannezota corporation, 4105 Lexington Avenue No., Arden Hulls, MN 55126 (the "Company"), and Too (the "Merchant").

RECITALS

Merchant owns or leases an eutomated teller machine ("ATM"). Company is in the business of providing processing services for ATMs. Merchant desires to engage Company to perform certain services as set forth herein.

NOW, TREREFORE, in consideration of the foregoing Recitals and of the covenants and agreements hare nafter contained, it is hereby agreed as follows:

- EQUIPMENT. Merchant shall place a TRITON mini ATM MODEL.
 9500 on its premises in an Indoor location mutually agreed upon and as identified in Exhibit 1 ("Premises").
- 2. AVARABILITY. Morchant agrees that the ATM shall at all times remain available for use by Merchant's customers during Merchant's normal business hours for the term of this Agraement. However, Merchant shall make the ATM available during reasonable business hours so that Company may perform melitianance or system improvements. Generally, such maintenance should not exceed two (2%) percent of available time per calendar month.
- 3. TRANSACTION PROCESSING FEES. Company agrees to pay Merchant for each transaction made on the ATM. A "transaction" shall mean any each withdrayal made from a carchiolder's account. Company shall pay Merchant table per transaction. Payments for transactions will be disbursed monthly by Company to Merchant on or before the 15th of each calendar month following the calendar month in which the transactions occurred. In addition, Merchant shall pay a \$\infty\$ monthly processor connection fee. Merchant authorizes Company to deduct such monthly charge from the transaction fee payable hereunder. The transaction fee may be increased or decreased by Company upon at least 45 days prior written notice to Rerchant provided such increase or decrease is directly related to a corresponding cost incurred by Company in providing such service.
- 4. TRANSACTION SURCHARGES. In the event Merchant is legally permitted and chooses to impose a surcharge upon each transaction, Merchant hereby authorizes Company to receive, from transaction proceeds processed, a fee equal to twenty (20%) percent of the gross monthly surcharges paid per month. Company agrees that the remaining surcharge revenues shall be remitted to Merchant at the time the transaction fees described in paragraph 3 are paid.
- 5. PROCESSING SERVICES. Company agrees to provide data processing carrieos, through its agreement with Deluxe Data Systems, inc. of such other processing service as Company, in its sole discretion, may select, to process authorized ATM transactions. Merchant agrees to select, to process authorized ATM transactions. Merchant agrees to securately complete, the Access Cash Merchant Application, and has completed and delivered or shall complete and deliver such other documents as are reasonably required to facilitate the implementation and delivery of such processing services.
- 6. INVENTORY REQUIREMENTS. Merchant shall, at he cost and expense, inventory an adequate supply of paper and ribbons at Merchant's Premises, which are available from Company. Herchant shall keep sufficient amounts of cash in ATM at all times, for normal expected subspection usage.
- 7. PHONE AND ELECTRICAL REQUIREMENTS. Merchant shall, at its expense, contract for and provide a local dedicated fundiness telephone time and one (1) dedicated operating electrical power outlet (110V), both within three (3) feet of the ATM cite. Marchant shall pay for mentily charges incurred in connection with such telephone line and electrical power usage.
- EXCLUSIVITY. Merchant shall not permit the ineculation of any other ATM on Merchant's President, not permit the removal of the ATM from the Premises for the term of this Agreement, except so may be agreed by Company in writing or required by any lessor of the ATM.
- 3. INSURANCE REQUIREMENTS. Merchant agrees to protect the ATM from demand, loss, then or destruction. Merchant shall provide and attle from demand, loss, then or destruction of the ATM in an amount not loss than the full replacement value of the ATM. Merchant agrees it shall make no alteration nor addition to the ATM, and that has permit argument.

other than authorized representatives of the Company, to perform any service or repair work on the ATM unless it receives Company's prior written authorization.

- 10. TERM. This Agreement shall be for a tarm of five (5) years from the date of leastallation, unless amended or terminated by written agreement signed by both Company and Merchant or terminated by Company pursuant to paragraph 15 below. Notwithstanding anything condained herein to the contrary, Company shall have the option, in its sole discretion, to extend this Agreement for additional periods of five (5) years each.
- 11. WARRANTIES AND REPRESENTATIONS OF MERCHANT. Marchant warrants and represents as follows:
 - it is the owner of the Premises or that it holds a lease or option to renew the lease for said Premises of equal or greater length than the initial tive-year term of this Agreement.
 - b) It is engaged in a lawful business and is duly licensed under the laws of the State, County and City in which Merchant and the ATM is located, to conduct such business.
 - c) It has not been terminated from sottlement or card transactions by any financial institution or determined to be in violation of MASTERCARD or VISA rules and regulations.
 - d) It has the authority to enter into this Agreement with Company and that the person(s) signing for or on behalf of Morchant are specifically authorized and directed to do so by Morchant.
- 12. EQUIPMENT RELOCATION. In the event Merchant transfers or moves its business from the Premises, Merchant shall notify Company not less than thirty (36) days prior to any such event. In such event, this Agreement shall be automatically deemed amended to apply to Merchant's new location for any remaining terms(a) of this Agreement.
- 13. TERMINATION. This Agreement and all obligations of the Company hereunder may be concelled by Company in the event of Kerchant's default under the terms of any lease for the ATM or in any event if Merchant falls to comply with the terms of this Agreement. Merchant may terminate this Agreement prior to the end of the then current term, provided Merchant gives Company 150 days advanced notice and pays Company a cancellation fee as follows: 30% of the average monthly charges which have been billed or collected by Company during the six (6) months prior to termination times the months remaining in the time current term of this Agreement. Merchant hereby authorizes Company to collect the cancellation fee on the termination date by electronic fund transfer from Merchant's Clearing account.
- 14. ATTORNEYS' FEES. If suit or action is instituted to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to costs, such sums at the court may adjudge reasonable for legal fees at trial and on any appeal thereform.
- 15. COMPANY NOT LESSOR'S AGENT. Merchant understands and agrees that Company is not on agent of any lessor of the ATM, that it has no authority to act on behalf of or for any lessor, and that it is not authorized to waive or after any form or condition of any lesse for the ATM.
- 16. COMPANY'S LIMITED LIABILITY TO MERCHANT.
 - a) Company will use ordinary care in providing transaction processing service and will, at Company's expense, transaction processing service and will, at Company's personnel, toward, the expense of correcting such errors incurred by However, the expense of correcting such errors incurred by its performance of non-performance of the obligations under by the performance of non-performance of the obligations under by the performance of non-performance of the obligations under bits performance of the obligations under the performance of the obligations under the performance of the obligations of the obligations of the performance of the obligations of the performance of the performance of the obligations of the performance of the
 - b) Company shall have no liability to third parties for any comages incorred by such third parties arteing out of the performance or non-performance of sorvices under this agreement, and merchant agrees to and hereby shall indomnify and inicial company harmless of, from and against any and all liability, claims, causes of actions or expenses relating theree including Company's attorneys' tees in confection therewith.





FORD DEALER COMPUTER SERVICES, INC.

This Agreement is between:	Glacier Valley Ford & Mercury, Inc. Name 615 South Blvd			
	City	State	Zip	

hereinafter referred to as Dealer, and FORD DEALER COMPUTER SERVICES, INC., hereinafter referred to as FDCS.

THIS AGREEMENT IS SUBJECT TO ARBITRATION UNDER APPLICABLE STATUTE.

SECTION 1. DEFINITIONS.

Application Program - A series of programs which enable the computer to perform a specific task such as the processing of a payroll.

Documentation - All information in human-readable form, including specifications, manuals, books, pamphlets, enhancement notifications, utilities, report generators, documents, drawings, and other tangible items which explains the capabilities of the Software and provides operating instructions for using the Software to obtain desired results.

Enhancements and/or Modifications - Any modification or addition that, when made or added to the Licensed Software, materially changes its utility, efficiency, functional capability, or application.

Equipment - All of the computer equipment listed in Schedule A and/or Schedule C, which is sold and/or maintained by FDCS.

FDCS In-Dealership Computer System - The FDCS computer system for automobile dealerships including but not limited to all Equipment, Software, and communications devices.

Firmware - Micro-programs which enable various types of equipment to function with FDCS Software.

Foreign Device - A foreign device is defined as any device that was not sold by FDCS or Ford Motor Company Dealer Computer Services division, unless specifically provided for in this Agreement.

Licensed Copy - All FDCS authorized copies, in any format, of the Licensed Software in the possession of Dealer. Licensed Software - All Software, as defined herein, a license for which is granted to Dealer pursuant to Section 5 of this Agreement.

On-Line Parts and Vehicle Locator Service - Service which enables Dealer to inquire into other FDCS clients' parts and vehicle inventory records and vice versa in order to locate a given parts or vehicle inventory item rapidly so that it may be readily purchased from the closest point.

Operating System - A series of programs which enable the computer to perform its general internal supervisory processes that are not specific to any Application Program. These processes include communications, database, and print spooling functions.

Program - A series of instructions that tell the computer how to perform a task.

Remedial Maintenance - Maintenance service on Equipment for failures which have occurred as a result of routine normal use and excluding any failures as described in Section 4(G) "Exclusions to Remedial Maintenance." Site Ready Agreement - Form prepared by FDCS and acknowledged by Dealer describing the specifications for Dealer's computer location and environment.

Software - A general term used to describe all Programs used inside the computer and peripheral devices to make them perform any function. This term includes Operating System, Application Programs, Documentation, corrections or Modifications, Enhancements, microsoftware, and Firmware used within the central processing unit or within any peripheral device, terminal, or printer attached to the system.

Dealer On-Line Parts and Vehicle Locator Service Responsibilities.

As a part of this Agreement, Dealer acknowledges and agrees to accept the following responsibilities:

Dealer is responsible for reporting all data circuit failures, as they occur, to FDCS. FDCS will coordinate all repairs to the data circuit with the applicable communications company.

Dealer will cooperate with FDCS as necessary in making tests to isolate any problems with the data circuit.

C. Permission to Disclose Dealer Data.

The very essence of the On-Line Parts and Vehicle Locator Service is the sharing of data regarding parts and vehicle inventories among the clients of FDCS. Dealer therefore authorizes FDCS to provide Dealer's parts and vehicle inventory data to all other clients of FDCS; however, Dealer acknowledges that only parts inventories of Ford and Lincoln/Mercury franchises controlled by the Parts Inventory Control Software of the FDCS In-Dealership Computer System can be accessed through the On-Line Parts Locator Service.

D. Disclaimer of On-Line Parts and Vehicle Locator Service Warranties and Limitation of Liability. FDCS represents that so long as Dealer pays the charges stated in Schedule E for connection to the On-Line Parts and Vehicle Locator Service, FDCS will make every reasonable effort to provide access to the On-Line Parts and Vehicle Locator Service during the term of this Agreement. However, Dealer acknowledges and agrees that providing this Locator Service is an undertaking of the highest technical complexity. Dealer further acknowledges and agrees that in order for FDCS to provide this Locator Service, FDCS requires the services of other subcontractors, including Ford Motor Company and various communications companies, and the agreements that FDCS has with these subcontractors may not provide any recourse to FDCS in the event such subcontractor fails to perform as required.

DEALER THEREFORE RELEASES FDCS FROM ANY LIABILITIES WHATSOEVER FOR FAILURE TO PROVIDE ACCESS TO THE ON-LINE PARTS AND VEHICLE LOCATOR SERVICE (DOWN-TIME), FOR ANY FAILURE BY THIRD PARTIES, OR FOR ANY OTHER REASON BEYOND FDCS' REASONABLE CONTROL.

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE MADE BY FDCS WITH RESPECT TO THE ON-LINE PARTS AND VEHICLE LOCATOR SERVICE OR ANY OTHER SERVICES CONTEMPLATED HEREIN.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, FDCS SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO DEALER FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, EVEN IF IT HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. DEALER'S SOLE AND EXCLUSIVE REMEDY HEREUNDER SHALL BE RESTORATION OF THE PARTS AND VEHICLE LOCATOR SERVICE.

SECTION 9. DISCOUNT.

If Dealer purchases all printed forms and supplies (including stock paper, ribbons, print-wheels, etc.) that are used in conjunction with the FDCS in-Dealership Computer System from FDCS, and maintains all CRTs, printers, modems, personal computers, other peripheral equipment, CPUs, disk drives, tape drives, and power conditioners attached to the FDCS in-Dealership Computer System with FDCS, a discount as stipulated in Schedule C will be given on all Monthly Maintenance Charges for Equipment.

SECTION 10. TERM AND EXTENSION OF AGREEMENT.

The term of this Agreement shall be for one hundred twenty (120) months from the date when the computer system is operational ("Original Term"), such date to be conclusively designated by FDCS. Following the expiration of the Original Term, this Agreement shall automatically be extended for like periods ("Extension Term"), unless either party gives the other written notice to terminate one hundred eighty (180) days prior to the expiration of the Original Term or the then current Extension Term.



Fourth Floor 1 South Pinckney Street P.O. Box 927 Madison, WI 53701-0927

Phone • (608) 257-9521 Fax • (608) 283-1709

Gary L. Antoniewicz
Direct Dial Number • (608) 283-1759
gantoni@boardmanlawfirm.com

July 21, 2009

Senator Robert Wirch Chair Committee on Small Business, Emergency Preparedness, Technical Colleges and Consumer Protection State Capitol Madison, WI 53703

Re: Midwest Equipment Dealers - Support of Passage of SB 190

Dear Senator Wirch and Members of the Committee:

Our firm represents the Midwest Equipment Dealers Association ("MEDA") comprised of farm, industrial, construction and lawn and garden dealers throughout the state. MEDA supports passage of SB 190 as now before the Committee.

Last winter at area meetings with members we had discussions on this issue. After these meetings, we realized how many members have been affected by hidden automatic renewal clauses in contracts with service providers and office equipment vendors. Numerous horror stories were presented by members as to how they were forced to continue unwanted services for years because they had failed to send a notice during a cancellation window hidden in the contract.

SB 190 does not ban automatic renewal clauses, but it does promote fairness in transactions by imposing notice requirements. It simply provides for notice before a contract automatically renews and provides an opportunity to cancel.

MEDA wishes regulation like this would not be necessary, but it is. Many service providers have made extreme efforts to create contracts hiding renewal clauses and tricking customers into longer terms than initially represented. Such abuses have created the need for SB 190.

MEDA urges passage of SB 190 and believes the time to act has come. Thank you for your support.

Sincerely,

Boardman, Suhr, Curry & Field I

Gary L. Antoniewicz

GLA/jmc